

Washington State Association of Counties
Comments on draft Municipal Water Law Section (5)(2) document
March 31, 2006

General comments

-Certain provisions of the Municipal Water Law (MWL) appear to reflect legislative directions to rely on local government processes, particularly planning processes, and particularly those of county governments, to address water-related issues. For instance, the Watershed Planning Act--RCW 90.82--requires county governments to be initiating parties, and only county governments are required to legally incorporate planning elements into their own codes and policies. The two-thirds of Washington's watersheds that are engaged in watershed planning under RCW 90.82 have necessarily engaged County governments extensively in water supply and water resource management issues. By requiring that certain plans and processes be consistent with locally adopted comprehensive plans, land use plans, and development regulations, the MWL is consistent with this trend, and the role of County governments should be fully recognized in the Ecology document.

-County governments have different levels of resources, priorities, and commitment to water system plan reviews within the scope of all the governmental activities they perform. The Ecology document should reflect these differences and limitations, and appropriately accommodate both those counties able to invest resources into this activity and those that are unable to do so. The WSAC would be happy to facilitate further discussions between Ecology and county governments around approaches that will accomplish this goal.

-It is not clear how this particular piece of policy from Ecology fits into the proposed DOH rulemaking, development by both agencies of other guidance documents, and a planned overall MOU between the two agencies on implementation of the MWL. It would be helpful for County governments (and maybe others) to have an articulation of which pieces of implementation are going where, why some are going into rules and others are not, and how implementation will be addressed in an ongoing manner with the participation of all stakeholders, including counties.

Specific comments

-We fully support the idea that continuous compliance by the water utility is the objective under the MWL, and the approach by Ecology (and Health) should be tailored toward that end.

-The key issue being addressed by the (5)(2) document is whether a water utility is given, and then maintains, an expanded place of use by virtue of having an approved water system plan--provided it is not inconsistent with local plans--and maintaining that expanded service area by remaining in compliance with its approved plan. However, maintaining that service area is not an end into itself. It authorizes new development to take place, and be served water by that utility, which is important information to local governments making land use and permitting decisions. However, there appears to be nothing in the policy with regard to the local government role in either the determinations of consistency or compliance, or notification to the local government of any determinations of inconsistency/noncompliance or return to compliance. That needs to be included in the document.

-There seems to be no middle area between somewhat draconian consequences imposed on a water utility that is out of compliance, and an apparent inclination to look the other way if there are some concerns regarding compliance. We would suggest that Ecology and Health look to existing mechanisms that provide routine looks at a water utility's operations--e.g., the annual operating permit classification, the annual Consumer Confidence Report, routine sanitary surveys--and use the results from those quick looks to notify a water utility that it is in danger of losing its certification, and what steps it must take to be fully able to use the MWL's provisions on expanded service areas.

-The specific elements outlined as part of the consistency/compliance determinations seem not to be comprehensive. It would be useful to list those elements that are already used by both agencies to determine consistency/compliance, and to enumerate which of those will--or will not--play into the (5)(2) determination.